

In the Matter of Certificate of Service No. E-308980
Issued to: DIEGO CASTILLO GARCIA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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DIEGO CASTILLO GARCIA

This appeal comes before me in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 14 January, 1949, an Examiner of the United States Coast Guard at New York, New York, entered an order revoking Appellant's certificate of service upon finding him guilty of "misconduct", supported by a specification alleging possession of narcotics contrary to law, while employed as a messman aboard the American SS CAPE ANN on 3 June, 1947, in the port of New York City. An appeal was taken from this order and on 11 April, 1949, I remanded the case for further proceedings in support of Appellant's contentions that he had not been afforded full opportunity to secure counsel and that all of the legal implications of a plea of guilty had not been fully explained to him.

On 6 July, 1949, pursuant to my order of 11 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard at San Francisco, California, to answer the charge of "misconduct" supported by a specification alleging that while Appellant was serving as a messman on board the American SS CAPE ANN, under authority of Certificate of Service No. E-308980, he unlawfully acquired, on or about 3 June, 1947, a quantity of marijuana without having paid the transfer tax, while said vessel was in the port of New York.

At this latter hearing, Appellant was fully informed as to the nature of the proceedings and all the rights to which he was entitled. Appellant was represented by counsel of his own choice and a plea of "not guilty" to the charge and specification was entered. The Investigating Officer introduced in evidence the Federal court judgment of conviction which was based on the same acts of Appellant as in this proceeding. Appellant testified under oath in his own behalf and also obtained the testimony of a United States Probation Officer. After both parties had been given an opportunity to make closing arguments and submit proposed findings and conclusions, the Examiner found the specification and the charge "proved", and he entered an order revoking Certificate of Service No. E-308980.

In the appeal submitted by counsel on behalf of Appellant, it is urged that the ends of justice would be best served by dismissal of the offense charged since Appellant's conduct has been exemplary during the entire two years' probationary period which was imposed as a result of the Federal judgment of conviction mentioned above. It is further stated that the record shows that Appellant is not a user nor a trafficker in narcotics; that this offense is based on an isolated incident; and, therefore, Appellant's presence on American vessels would not be a hazard to the maritime service.

Appellant testified that he has been going to sea since 1942. There is no record of any previous disciplinary action having been taken against Appellant by the United States Coast Guard.

FINDINGS OF FACT

On or about 3 June, 1947, Appellant was serving as a member of the crew in the capacity of messman on board the American SS CAPE ANN, under authority of Certificate of Service No. E-308980, while said ship was in the port of New York City. On this date, Appellant was searched and found to have in his possession approximately 422 grains of marijuana. It was ascertained that Appellant had not paid the transfer tax required to be paid by transferees of marijuana.

After indictment based on the above facts, Appellant pleaded "guilty" and was convicted in the District Court of the United States for the Southern District of New York. Sentence was suspended and Appellant was placed on probation for a period of two years. This probationary period commenced on 7 June, 1947, and has now been satisfactorily completed.

Appellant testified that while the ship was in Panama, a stevedore gave him "two rolls" which the stevedore referred to as a "refer". Appellant did not pay anything for it but put it in his suitcase and "forgot" about it until he was apprehended in New York.

OPINION

The defects of the hearing on 14 January, 1949, which led me to remand this case for further proceedings because of the failure to afford Appellant adequate opportunity to exercise his right to secure counsel and the neglect to inform him of the significance of a plea of "guilty", have been completely remedied by the hearing conducted on 6 July, 1949, on which the present appeal is based. At the latter hearing, Appellant was represented by an attorney and he entered a plea of "not guilty" to the offense charged. Under these circumstances, the case may now be considered on its merits.

The strong position which the Coast Guard takes against permitting any seaman to sail on American merchant vessels after he has been discovered to be associated with narcotics in any manner, was not amplified in my prior decision concerning this case because of the fact that the case was remanded on procedural ground. As has been repeatedly stated in many other similar cases, the policy of revocation has been consistently adhered to in order to fully comply with the statutory mandate which makes it the duty of the Coast Guard to protect American crews and ships from any danger caused by the abuse of privileges extended by the Coast Guard. And the issuance of documents, licenses and certificates of service, which permit men to sail on American merchant vessels, is a privilege and not a right, regulated by the Coast Guard. Consequently, it is the duty of the Coast Guard to revoke Appellant's certificate of service because of the seriousness of the offense involved.

This is not to penalize or punish Appellant for his past actions but to protect others from the danger which would result from a repetition of the offense. Hence, the risk of a recurrence cannot be entertained even though Appellant has satisfactorily completed his court probation and is not an addict.

As the Examiner stated in his decision, the judgment of the United States District Court is res judicata of the issues decided by that judgment. And since the same acts charged therein form the basis of the offense charged in this proceeding, the Federal court judgment of conviction is conclusive in this proceeding and Appellant must be found "guilty" (46 Code of Federal Regulations 137.15-5).

CONCLUSION

Since it is the well-established policy of the Coast Guard to exercise its power of revocation when a merchant seaman is found to have in his possession unlawfully any amount of marijuana, the order of the Examiner must be sustained.

ORDER

The order of the Examiner dated 6 July, 1949, should be, and it is, **AFFIRMED**.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 20th day of Sept, 1949.